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National Planning Casework Unit
5 St Philips Place
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8th June 2016

Dear Fiona,

Re: Request for EIA Screening Direction in respect of land at Germany Beck, East Of Fordlands Road, Fulford, York.

Thank you for allowing Fulford Parish Council to submit additional comments in response to the correspondence sent to NPCU by Mike Slater on 4th May 2016 (please note that, due to an oversight, parish councilors were only made aware of CYC's communication on 26th May).

In summary, we maintain all the arguments set out in our letter of 18th April and refute CYC's opinion that the additional flood defences at the A19 should be regarded as works of 'improvement' within the highway boundary that do not require planning permission and that the defences "*would not fall into either Schedule 1 or Schedule 2 to the EIA Regulations.*

EIA and ancillary works.

1. The defences are ancillary works associated with the main EIA project, being 'additional' to the raising of the carriageway. The raising of the road would not be effective in the absence of the ancillary works and (significantly) these works are necessary as otherwise the new junction would be subject to complete closure during flood events in the absence of the additional defences. This clear inter-dependence means that the flood defences represent an extension to the main EIA infrastructure project and thus require screening, taking into account the cumulative effects of the works in combination with the main project.

Planning permission

2. We refute the assertion that the defence works are all contained within the highway boundary because CYC has already admitted that third party land will be required. In this regard, it is clear that parish council land to the east of the A19 is needed, yet no approach has been made to obtain our agreement for such works. Furthermore, at least two other adjoining landowners have voiced their concerns about encroachment onto their land (including SSSI land) and similarly, were

neither informed nor consulted prior to the S278 plans being agreed.

3. It is clear that the defences are 'engineering works' and can be defined as development requiring planning permission. In this regard it is significant that a very similar flood defence scheme in York was subject to a full planning application and was considered by the planning committee in 2012 (12/02373/FULM). For this application, full section plans of walling and embankments were submitted as well as visual appraisals, landscaping details, a tree constraints plan, a bat (tree) assessment, a Design and Access Statement, a Flood Risk Assessment and an EIA Scoping Report by the Environment Agency. The application was subject to full consultation and the Committee Report confirms that the EA had been in discussion with the council throughout the development of the scheme and carried out public consultation at key stages to explain the need for the defences and provide information on the options assessment and designs. Conditions were also imposed to ensure that the materials used would be appropriate and that a landscape management plan would be secured. In 2013, the scheme was amended and a further full planning application was submitted together with an updated FRA and other assessments.
4. Whilst the Water End scheme is somewhat larger than the Germany Beck scheme, the principles involved are the same. At Germany Beck however, CYC is seeking to circumvent the need for any development control by amalgamating the Germany Beck flood defences with the developer's proposals via a S278 agreement. As a consequence, even the most basic details of the defence scheme remain hidden from public view and are not subject to scrutiny by the EA or any other third parties.

Environmental effects

5. CYC claims that *"the environmental effects of raising the road level and construction of walls have already been taken into account by the Local Authority and the Environment Agency in considering the development proposal..."*. However, it cannot be argued that the environmental effects of the flood defence walls and land raising have been taken into account because these are additional to the main project and did not form part of the planning application. Furthermore, the plans were only drawn up after the planning process had ceased and indeed it seems that the plans are still being revised. It is also a fact that the Environment Agency has not been consulted on the present flood defence proposals although the general principles of a scheme to protect against a 1:50 year flood were agreed in 2006 some 10 years ago.
6. As part of the discharge of reserved matters condition no 9 (Bat Mitigation) the developer submitted a Tree Survey and Impact Assessment in respect of trees and hedges on the west side of the A19 and along Landing Lane (these trees will be directly impacted by the additional flood defence walling and land realignment). The Impact Assessment concluded:

...the construction works as currently proposed are assessed to be acceptable in arboricultural terms. It is not anticipated to lead to

the loss of any trees and any adverse impact on their long-term health of the trees is likely to be restricted to reduced vigour for a limited period of time until their rooting systems reach a new balance. [Arboricultural Impact Assessment dated 08/12/14]

The parish council considered that this assessment significantly understated the true impact on these trees. It was also pointed out that CYC did not own the trees in question and that there was no monitoring programme in place in any case. In April this year, an independent survey was commissioned by a parish councillor, which concluded that every one of the boundary trees and hedges would be adversely impacted. The impact assessment was based upon the construction plans for the floodwalls provided in the S278 Agreement, including the below ground construction details. CYC's claim that there will be no significant environmental impacts is therefore called into question. [The Report by *Barnes Associates* is attached)

Misleading claims

7. In the letter of 4th May, CYC misleadingly states that the works are "*to protect the existing highway from surface water*". This is disingenuous because the floodwalls and land realignment are required to defend against large volumes of floodwater that flow from the River Ouse floodplain, not for surface water control. The reference to 'surface water' is made twice on page 2 of CYC's letter and we trust that you will disregard the implications that CYC is seeking to make.

Compensatory flood storage

8. CYC's letter states:

Provision is incorporated into the flood compensatory measures required by condition 25 of the outline planning approval to deal with any loss of flood storage caused by the raising of the highway and associated works.

It is not made clear what 'associated works' means but it is evident from the plans that the compensatory storage provided under condition 25 does not take full account of the loss of storage that will ensue once the additional defences are in place. Condition 25 was discharged in 2014 and it is relevant to note that the details were not described in any Environmental Statement, despite the amount of overall storage having to be increased as a result of recent flood modelling.

Correspondence between FPC and CYC's Flood Risk Manager.

9. CYC's letter (page 1) relies on correspondence between FPC and CYC's Flood Risk Manager dating from 2013 to describe how flooding affects the A19. The following quote from the Flood Manager is cited:

The current flooding of the road occurs as the rising river backs up and the level is reflected directly in Germany Beck. This flows under the bridge until such a level is reached when it flows over the road as well. The same will happen when the road is raised but flow will only be under the road, and the A19 will remain clear.

This analysis is not accepted and in fact demonstrates a misunderstanding of the consequence of simply raising the level of the road at the new junction. To claim

that when the road is raised, "flow will only be under the road and the A19 will remain clear" is factually incorrect; the carriageway will only remain clear of floodwater when the additional defence scheme is fully constructed. The parish council explained this point in its subsequent letter to the officer dated 7 March 2013:

Our understanding is that Persimmon's proposed new junction **on its own** will not be effective in solving all the problems of flooding at the A19 and we still hold to this view. The lengths of the A19 to the north and south of the junction will not be raised in association with the junction works but will remain at existing levels. Consequently, these sections of the road would continue to flood unless additional defences are put in place to prevent floodwater reaching the carriageway via these routes.

We refer to JSM Drawing of June 2006 (no 2066/89) that illustrates how floodwater will continue to flow across the A19 following the construction of the junction. The developers are committed to funding **this part of the scheme** but they are not directly responsible for the additional defences that are essential to the whole project. They are however, obligated through S106 to contribute a sum of £136,000 towards the provision of these defences. [FPC letter 07/03/13]

No reply or clarification was ever forthcoming from the officer and our request for an urgent meeting was ignored.

10. A further extract from the officer's letter makes an even more outrageous claim:

Not only will the problems of the A19 be resolved but this access road to the new development will also provide a link to Fordlands road which will maintain access to 300 households during flood events, which must surely be welcomed. Funding of this work, as you will be aware, is the responsibility of the developer and the Council will ensure that the design meets it the necessary requirements, including the appropriate design level for the road.

It is a matter of fact that the Germany Beck development does not provide any flood defences at Fordlands Road (which provides the only road access to 300 homes). In fact, CYC officers are currently trying to devise a solution to the flooding of Fordlands Road and have asked the parish council for permission to carry out topographical surveys in order to understand the extent of the works that may be required. Importantly, there is no provision for the developer to fund any part of these works.

11. The officer in the same letter states (also incorrectly) that no housing is proposed in flood zone 3:

Finally, with regard to the issue of insurance, you will be aware that the housing will be located in the low risk flood zone 1, with possibly a small amount in flood zone 2...No housing is proposed in the high

risk zone 3, and consequently, there is no reason for these properties to be uninsurable.

We draw your attention to this correspondence because it perfectly demonstrates that CYC do not appear to have a full understanding of the impact of the development on flood risk and it highlights the need for an updated flood risk assessment and further EIA now that the flood defence scheme has been incorporated into the developer's proposals. [The full correspondence is attached to this letter].

Access slip road

12. A short section of the access slip road adjacent to Fordlands Road was constructed in April 2015 in order to 'implement' the permission. In December 2015, the section of road was covered by floodwater [see photos attached] and it is clear that the level of the road is not high enough to prevent it becoming impassable during flood events.

Current situation

13. Construction work has not yet commenced onsite although no reasons have been provided for this delay.

We trust that these additional points will be taken into account in reaching any decision on the need for a screening direction and would be pleased to provide any additional information or clarification that may be required.

Thank you for your consideration of this matter.

Yours sincerely

Rachel Robinson

Clerk & RFO - Fulford Parish Council

Copied to:

Mike Slater (CYC)

Simon Usher (Persimmon Homes)

Robin McGinn (Persimmon Homes)

Julian Sturdy MP